

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INQUIRY INTO THE USE OF CONTRACT)
SERVICE ARRANGEMENTS BY) ADMINISTRATIVE
TELECOMMUNICATIONS CARRIERS) CASE NO. 2002-00456
IN KENTUCKY)

DIRECT TESTIMONY

OF

KIMBERLY K. BENNETT

ON BEHALF OF KENTUCKY ALLTEL, INC.
AND ALLTEL KENTUCKY, INC.

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DIRECT TESTIMONY OF KIMBERLY K. BENNETT

1 **Q. Please state your name and business address.**

2 A. My name is Kimberly K. Bennett. My business address is One Allied Drive, Little
3 Rock, Arkansas 72202.

4

5 **Q. By whom are you employed and in what capacity?**

6 A. I am employed by ALLTEL Communications as Manager - State Government
7 Affairs. I am testifying in this proceeding on behalf of Kentucky ALLTEL, Inc.
8 and ALLTEL Kentucky, Inc. (collectively, "ALLTEL"), which are incumbent
9 local exchange carriers ("ILECs") serving various exchanges throughout the
10 Commonwealth.

11

12 **Q. Please describe your experience with ALLTEL and in the**
13 **telecommunications industry.**

14 A. Since joining ALLTEL in 1998, I have held various positions in the State
15 Government Affairs Department, where my responsibilities include monitoring
16 and responding to various state commission and legislative activities throughout
17 ALLTEL operating territories. I received my Baccalaureate of Arts in Business
18 Administration from Stephens College in Columbia, Missouri and my Juris
19 Doctorate from the University of Arkansas at Little Rock School of Law. Upon
20 passing the Arkansas Bar Examination in 1995, I was licensed to practice law in
21 the State of Arkansas.

1

2 **Q. What is the purpose of your testimony in this proceeding?**

3 A. The primary purpose of my testimony is to discuss the statutory provisions
4 providing for exemption of existing tariffing regulations and statutes with respect
5 to contract service arrangements ("CSAs"). I will discuss the Kentucky Public
6 Service Commission's ("Commission") authority to grant such flexibility pursuant
7 to K.R.S. §278.512 and the compliance of such action with the reasonableness
8 standard set forth in K.R.S. §278.170.

9

10 **Q. Please provide an overview of your testimony.**

11 A. Minimizing existing regulatory processes with respect to CSAs is consistent with
12 Kentucky law. Legislative findings in K.R.S. §278.512 acknowledge the changing
13 telecommunications environment and a utility's corresponding need for regulatory
14 flexibility. These statutes recognize that it is sometimes reasonable (if not
15 essential) for a utility (ILEC or CLEC) to differentiate between persons, localities,
16 or classes of service that are not similarly situated. The Commission has
17 successfully relied on K.R.S. §278.512 in the past with respect to granting certain
18 regulatory exemptions.

19

20 **Q. What position has ALLTEL advocated in this proceeding in general with
21 respect to CSAs?**

22 A. ALLTEL has suggested that the Commission minimize existing filing
23 requirements and approval processes with respect to CSAs in order to allow all

1 competitors to respond to customer demands in a timely manner and therefore
2 engage in a true competitive exchange with other competitors. ALLTEL's basic
3 position is that eliminating administrative burdens would allow all competitors to
4 develop in a timely manner competitively priced services that are tailored to better
5 meet customers' needs.

6

7 **Q. What statutes and/or Commission regulations would impact ALLTEL's**
8 **proposal to minimize existing CSA administrative provisions?**

9 A. Lessening existing administrative burdens with respect to CSAs would involve
10 Commission waivers of K.R.S. §278.160 and 278.180 and 807 K.A.R. 5:011
11 Sections 2 and 13. Under K.R.S. §278.160, the Commission is authorized to
12 prescribe rules under which utilities shall file schedules showing all of their rates
13 and conditions for service. Further, K.R.S. §278.180 requires utilities to give the
14 Commission thirty days' notice of any rate changes. In 807 K.A.R. 5:011 Section
15 2, all utilities under the Commission's jurisdiction must file tariffs containing
16 schedules of all of their rates, charges, tolls, and their rules and administrative
17 regulations. Pursuant to 807 K.A.R. 5:011 Section 13, utilities must file copies of
18 all special contracts entered into governing utility service which set out rates,
19 charges or conditions of service not included in the utilities' general tariffs.

20

21 **Q. Is a waiver of K.R.S. §278.170 also necessary?**

22 A. No, a waiver of K.R.S. §278.170 is unnecessary. A customer with a competitive
23 offer is not similarly situated to a customer without a competitive offer such that

1 differentiating between the two is reasonable. Conduct that is reasonable does not
2 violate K.R.S. §278.170, nor does differentiating between persons, localities, or
3 classes of service that are not similarly situated. Kentucky Revised Statute
4 §278.170 only prohibits utilities from giving any *unreasonable* preference or
5 advantage to any person or establishing or maintaining any *unreasonable*
6 difference between localities or between classes of service for doing a like and
7 contemporaneous service *under the same or substantially the same conditions*.
8 The presence of competition necessarily creates different conditions under which
9 a utility must operate, and it is reasonable and thus in compliance with K.R.S.
10 §278.170 for a utility to respond differently with respect to certain customers who
11 have competitive alternatives. This explanation of K.R.S. §278.170 (enacted in
12 1976) is consistent with the legislative findings in K.R.S. §278.512 (enacted in
13 1992), which reflect what is "reasonable" for the competitive telecommunications
14 environment and a utility's corresponding need for regulatory flexibility.
15 Alternatively, the Commission may simply exempt CSAs from K.R.S. §278.170
16 pursuant to the provisions in K.R.S. §278.512.

17
18 **Q. Does the Commission have authority to waive application of these statutes**
19 **and Commission regulations?**

20 A. Yes. Pursuant to 807 K.A.R. 5:011 Section 14, the Commission may deviate from
21 its rules in Sections 2 and 13 upon a showing of good cause. Additionally, K.R.S.
22 §278.512 allows the Commission to exempt telecommunications services or
23 products from other statutes such as K.R.S. §§278.160 and 278.180 (and K.R.S.

1 §278.170 if necessary) and to adopt alternative requirements for establishing rates
2 and charges upon consideration of the following public interest criteria: (1) the
3 extent to which competing services are available from competitive providers in
4 the relevant market; (2) the existing ability and willingness of competitive
5 providers to make functionally equivalent or substitute services readily available;
6 (3) the number and size of competitive providers of service; (4) the overall impact
7 of the proposed regulatory change on the continued availability of existing
8 services at just and reasonable rates; (5) the existence of adequate safeguards to
9 assure that rates for regulated services do not subsidize exempted services; (6) the
10 impact of the proposed regulatory change upon efforts to promote universal
11 availability of basic telecommunications services at affordable rates and upon the
12 need of telecommunications companies subject to the jurisdiction of the
13 Commission to respond to competition; (7) whether the exercise of Commission
14 jurisdiction inhibits a regulated utility from competing with unregulated providers
15 of functionally similar telecommunications services or products; (8) the overall
16 impact on customers of a proposed change to streamline regulatory treatment of
17 small or nonprofit carriers; and (9) any other factors the Commission may
18 determine are in the public interest.

19
20 Steve Mowery, who is also testifying on behalf of ALLTEL, is addressing these
21 public interest criteria in greater detail.

22

1 **Q. Has the Kentucky Commission ever relied on the public interest criteria in**
2 **K.R.S. §278.512?**

3 A. Yes. By Order dated August 16, 1996, the Commission granted an application by
4 BellSouth Telecommunications, Inc. (“BellSouth”) for exemption of its CSAs
5 under K.R.S. §278.512.¹ The Commission determined that exempting BellSouth's
6 CSAs from full regulatory review was in the public interest and would enhance
7 BellSouth's ability to respond effectively to market pressures. Also pursuant to
8 K.R.S. §278.512, the Commission (in Case No. 2001-077) allowed BellSouth to
9 file a report of all of its CSAs within ten days following the end of each month.

10
11 Additionally, in Administrative Case Nos. 359 and 370, the Commission noted
12 that it is bound by K.R.S. §278.512 when evaluating the reasonableness of
13 regulatory exemptions. In those cases, the Commission exempted interexchange
14 carriers and competitive local exchange carriers from certain tariffing and other
15 administrative requirements.

16
17 **Q. Does this conclude your testimony?**

18 A. Yes, at this time.

¹ In the Matter of BellSouth Telecommunications, Inc. Tariff Revision to Price Regulation Plan in Section A36 of General Subscriber Services Tariff Concerning Contract Service Arrangements and Special Assemblies (Case No. 96-380).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Testimony was served upon the parties in the attached service list via regular U.S. mail postage prepaid this 30th day of April, 2003.

Noelle Holladay

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